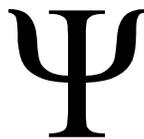


**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF PSYCHOLOGY**

**SUMMARY OF
CALIFORNIA LAWS
RELATING TO THE
PRACTICE OF PSYCHOLOGY**



REVISED July 2002

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When using this booklet, please remember that it is only a summary of the laws and regulations. The Board of Psychology, law enforcement, and courts follow the full and exact language of the law contained in the California Codes. If there is a conflict, this booklet cannot be relied upon as law.

This booklet is provided as a courtesy by the Board of Psychology to applicants who are eligible for the California Jurisprudence and Professional Ethics Examination (CJPEE).

BUSINESS AND PROFESSIONS CODE

§ 101.6. Purpose of Boards, Bureaus, and Commissions

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

(Added by Stats. 1980, c.375. p. 748, § 1.)

§ 337. Brochure for victims of psychotherapist-patient sexual contact and victim's advocates; distribution of copies

- (a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist patient sexual contact and advocates for those victims. This brochure shall be developed by the department in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.
- (b) The brochure shall include, but is not limited to, the following:
 - (1) A legal and an informal definition of psychotherapist-patient sexual contact.
 - (2) A brief description of common personal reactions and histories of victims and victim's families.
 - (3) A patient's bill of rights.
 - (4) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option.
 - (5) A full description of administrative, civil, and professional associations complaint procedures.
 - (6) A description of services available for support of victims.
- (c) The brochure shall be provided to each individual contacting the Medical Board of California and their allied health boards or the Board of Behavioral Science Examiners regarding a complaint involving psychotherapist-patient sexual relations.

(Added by Stats. 1987, c. 1448, § 1. Amended by Stats. 1989, c.886 § 5.)

§ 728. Informing Patients of Rights and Remedies on Sexual Contact by Former Psychotherapist

- (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for,

patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

- (b) Failure to comply with this section constitutes unprofessional conduct.
- (c) For the purpose of this section, the following definitions apply:
 - (1) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage, family, and child counselor, a psychological assistant, a marriage, family, and child counselor registered intern or trainee, or associate clinical social worker.
 - (2) "Sexual contact" means the touching of an intimate part of another person.
 - (3) "Intimate part" and "touching" have the same meaning as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code.
 - (4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

(Amended by Stats. 1992, c. 890 (S.B. 1394), § 1.)

§ 729. Psychotherapist sexual exploitation

- (a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.
- (b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:
 - (1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.
 - (2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.
 - (3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.
 - (4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by

imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding then thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

- (5) An act or acts in violation of subdivision (a) with two or more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

- (c) For purposes of this section:
- (1) "Psychotherapist" has the same meaning as defined in Section 728.
 - (2) "Alcohol and drug abuse counselor" means an individual who holds himself or herself out to be an alcohol or drug abuse professional or paraprofessional.
 - (3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.
 - (4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.
- (d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.
- (e) This section does not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.
- (f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug abuse counselor in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

(Amended by Stats. 1993, c. 1072 (S.B. 743), § 2; Stats. 1994, c. 146 (A.B. 3601), § 2; Stats. 1995, c. 444 (S.B. 685), § 1.)

§ 2914. Qualifications of Applicants for Licensure

Each applicant for licensure shall comply with all of the following requirements:

- (a) Is not subject to denial of licensure under Division 1.5.
- (b) Possess an earned doctorate degree (1) in psychology, (2) in education psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

- (c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

- (d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.
- (e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.
- (f) Show by evidence satisfactory to the board that he or she has completed coursework, in spousal or partner abuse assessment, detection, and intervention. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational

requirements for licensure or in a separate course. This requirement applies to applicants who begin graduate training on or after January 1, 1995. This requirement for coursework in spousal or partner abuse detection and treatment shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

- (g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:
- (1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.
 - (2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.
 - (3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

(Added by stats. 2000, c.625 (A.B. 400), §2. Amended by Stats. 2001, c. 728 (S.B. 724) §24.4.)

§ 2941. Examination

Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.

(Amended by Stats. 1997, c. 758 (S.B. 1346, § 39.)

§ 2942. Examination Procedures - Passing

The board may examine by written or oral examination or by both. The examination shall be given at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the written and oral examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

(Amended by Stats. 1998, c. 589 (S.B. 1983), § 6.)

CAUSES FOR DISCIPLINARY ACTION (Business and Professions Code - Section 2960, 2960.1, 2960.5 and 2960.6.)

§ 2960. Grounds

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

- (a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

- (b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.
- (c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.
- (d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.
- (e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.
- (f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.
- (g) Violating Section 17500.
- (h) Willful, unauthorized communication of information received in professional confidence.
- (i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.
- (j) Being grossly negligent in the practice of his or her profession.
- (k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.
- (l) The aiding or abetting of any person to engage in the unlawful practice of psychology.
- (m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.
- (n) The commission of any dishonest, corrupt, or fraudulent act.
- (o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.
- (p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.
- (q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.
- (r) Repeated acts of negligence.

(Amended by Stats.1992, c. 1099 (A.B.3034), § 2; Stats.1994, c. 26 (A.B.1807), § 76, eff. March 30, 1994; Stats.1994, c. 1275 (S.B.2101), § 21; Stats.1998, c. 879 (S.B.2238), § 2; Stats.1999, c. 655 (S.B.1308), § 43; Stats.2000, c. 836 (S.B.1554), § 20.)

§ 2960.05. Limitations period

- (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.
- (b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

- (c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.
- (d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.
- (e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.
- (f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(Added by Stats.1999, c. 459 (S.B.809), § 1. Amended by Stats.2001, c. 617 (A.B.1616), § 2.)

§ 2960.1 Decision containing finding that licensee or registrant engaged in sexual contact with patient or former patient; order of revocation

Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(Added by Stats. 1994, c. 1274 (S.B. 2039), §1.8. Amended by Stats. 1998, c. 879 (S.B. 2238), § 3.)

§ 2960.5 Mental illness or chemical dependency; grounds

The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

(Added by Stats. 1992, c. 384 (S.B. 1773) § 1.)

§ 2960.6 Decision containing finding that licensee or registrant engaged in sexual contact with patient or former patient; order of revocation

The board may deny any application for, or may suspend or revoke a license or registration issued under this chapter for, any of the following:

- (a) The revocation, suspension, or other disciplinary action imposed by another state or country on a license, certificate, or registration issued by that state or country to practice psychology

shall constitute grounds for disciplinary action for unprofessional conduct against that licensee or registrant in this state. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

- (b) The revocation, suspension, or other disciplinary action by any board established in this division, or the equivalent action of another state's or country's licensing agency, of the license of a healing arts practitioner shall constitute grounds for disciplinary action against that licensee or registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(Added by Stats. 1992, c. 384 (S.B. 1773), § 2. Amended by Stats. 1994, c. 1275 (S.B. 2101) § 22.)

§ 2961. Board Action

The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2965.

(Added by Stats. 1967, c. 1677, p. 4199, § 2. Amended by Stats. 1978, c. 1208, p. 3904, § 16; Stats. 1986, c. 1163, § 1; Stats 1989, c. 888, § 31.)

§ 17500. False or misleading statements

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.

Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

(Added by Stats. 1941, c. 63, p. 727, § 1. Amended by Stats. 1955, c. 1358, p. 2443, § 1; Stats. 1976, c. 1125, p. 5029, § 4; Stats. 1979, c. 492, p. 1660, § 1. Amended by Stats. 1998, c. 599 §2.5.)

PENAL CODE

§ 261.5. Unlawful sexual intercourse with person under 18; age of perpetrator; civil penalties

- (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.
- (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.
- (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.
- (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.
- (e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:
 - (A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).
 - (B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).
 - (C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).
 - (D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).
- (2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.
- (3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70.00) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant

shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(Added by Stats. 1999, c.853 (S.B. 832), § 10.)

§ 288 Lewd or lascivious acts; penalties; psychological harm to victim

- (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
- (b)
 - (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
 - (2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
- (c)
 - (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.
 - (2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.
- (d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent adult victim resulting from participation in the court process.
- (e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

- (f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:
- (1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent adults:
 - (A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
 - (B) Clinics.
 - (C) Home health agencies.
 - (D) Adult day health care centers.
 - (E) Secondary schools that serve dependent adults ages 18 to 22 years and postsecondary educational institutions that serve dependent adults or elders.
 - (F) Sheltered workshops.
 - (G) Camps.
 - (H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
 - (I) Respite care facilities.
 - (J) Foster homes.
 - (K) Regional centers for persons with developmental disabilities.
 - (L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.
 - (M) An agency that supplies in-home supportive services.
 - (N) Board and care facilities.
 - (O) Any other protective or public assistance agency that provides health services or social services to elder or dependent adults, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.
 - (P) Private residences.
 - (2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:
 - (A) Bathing.
 - (B) Dressing.
 - (C) Grooming.
 - (D) Medication storage.
 - (E) Medical dispensation.
 - (F) Money management.
 - (3) "Dependent adult" means any person 18 years of age or older who has a mental disability or disorder that restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have developmental disabilities, persons whose mental abilities have significantly diminished because of age.
- (g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the

individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

- (h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent adult under care.

(Added by Stats. 1901, c. 204, p.630, § 1. Amended by Stats. 1933, c. 405, p. 1028, § 1; Stats. 1937, c. 545, P. 1562, § 1; Stats. 1976, c. 1139, p. 5110, § 177, operative July 1, 1977; Stats. 1978, c. 579, p. 1984, § 17; Stats. 1979, c. 944, p. 3254, § 6.5; Stats. 1981, c. 1064, p. 4093, § 1; Stats. 1986, c. 1299 § 4; Stats. 1987, c. 1068, § 3; Stats. 1988, c. 1398, § 1; Stats. 1989, c. 1402, § 3; Stats. 1993-94, 1st Ex.Sess., c. 60 (A.B. 29), § 1; Stats. 1995, c. 890 (S.B. 1161), § 1; Stats. 1998, c. 925 (A.B. 1290), § 2.)

§ 11160. Injuries by firearm; assaultive or abusive conduct; reporting duties by health facilities, clinics, physician's offices, or local or state public health department; contents of report

- (a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):
- (1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.
 - (2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.
- (b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:
- (1) A report by telephone shall be made immediately or as soon as practically possible.
 - (2) A written report shall be prepared and sent to a local law enforcement agency within two working days of receiving the information regarding the person.
 - (3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.
 - (4) The report shall include, but shall not be limited to, the following:
 - (A) The name of the injured person, if known.
 - (B) The injured person's whereabouts.
 - (C) The character and extent of the person's injuries.
 - (D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.
- (c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

- (d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:
- (1) Murder, in violation of Section 187.
 - (2) Manslaughter, in violation of Section 192 or 192.5.
 - (3) Mayhem, in violation of Section 203.
 - (4) Aggravated mayhem, in violation of Section 205.
 - (5) Torture, in violation of Section 206.
 - (6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.
 - (7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.
 - (8) Battery, in violation of Section 242.
 - (9) Sexual battery, in violation of Section 243.4.
 - (10) Incest, in violation of Section 285.
 - (11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.
 - (12) Assault with a stun gun or taser, in violation of Section 244.5.
 - (13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.
 - (14) Rape, in violation of Section 261.
 - (15) Spousal rape, in violation of Section 262.
 - (16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.
 - (17) Child abuse or endangerment, in violation of Section 273a or 273d.
 - (18) Abuse of spouse or cohabitant, in violation of Section 273.5.
 - (19) Sodomy, in violation of Section 286.
 - (20) Lewd and lascivious acts with a child, in violation of Section 288.
 - (21) Oral copulation, in violation of Section 288a.
 - (22) Sexual penetration, in violation of Section 289.
 - (23) Elder abuse, in violation of Section 368.
 - (24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.
- (e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.
- (f) The reporting duties under this section are individual, except as provided in subdivision (e).
- (g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.
- (h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

(Amended by Stats. 2000, c. 287 (S.B. 1955) , § 20.)

§ 11161. Physicians and Surgeons: Reporting Duties

Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

- (a) The physician or surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.
- (b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to subdivision (a) include the following:
 - (1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.
 - (2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.
 - (3) A copy of the law enforcement reporting form.
- (c) It is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

(Amended by Stats. 1993, c. 992 (A.B. 1652) , § 5.)

§ 11161.9. Immunity from liability

- (a) A health practitioner who makes a report in accordance with this article shall not incur civil or criminal liability as a result of any report required or authorized by this article.
- (b)
 - (1) No person required or authorized to report pursuant to this article, or designated by a person required or authorized to report pursuant to this article, who takes photographs of a person unsuspected of being a person described in this article about whom a report is required or authorized shall incur any civil or criminal liability for taking the photographs, causing the photographs to be taken, or disseminating the photographs to local law enforcement with the reports required by this article in accordance with this article. However, this subdivision shall not be deemed to grant immunity from civil or criminal liability with respect to any other use of the photographs.
 - (2) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds that the suit is frivolous.
- (c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse shall not incur civil or criminal liability as a result of providing that access.
- (d) No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.
- (e) This section does not apply to mandated reporting of child abuse, as provided for in Article 2.5 (commencing with Section 11164).

(Added by Stats. 1993, c. 992 (A.B. 1652), § 6.)

§ 11162. Violation; offense; punishment

A violation of this article is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(Added by Stats. 1953, c.34, p. 645, § 1. Amended by Stats. 1993, c. 992 (A.B. 1652), § 7.)

§ 11162.5. Definitions

As used in this article, the following definitions shall apply:

- (a) "Health practitioner" has the same meaning as provided in Section 11165.8.
- (b) "Clinic" is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.
- (c) "Health facility" has the same meaning as provided in Section 1250 of the Health and Safety Code.
- (d) "Reasonably suspects" means that it is objectively reasonable for a person to entertain suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

(Added by Stats. 1993, c. 992 (A.B. 1652), § 8.)

§ 11163. Actions against health practitioners as a result of reporting duties; payment of attorney's fees

- (a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

- (b) (1) Therefore, a health practitioner may present a claim to the State Board of Control for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.
- (2) The State Board of Control shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregated amount of fifty thousand dollars (\$50,000).

- (3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(Added by Stats. 1993, c. 992 (A.B. 1652), § 10.)

§ 11163.2. Disclosure of reports; physician-patient or psychotherapist privilege

- (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.
- (b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.
- (c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.
- (d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

(Added by Stats. 1993, c. 992 (A.B. 1652), § 11.)

CHILD ABUSE AND NEGLECT REPORTING ACT

§ 11164. Short title; intent and purpose of article

- (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.
- (b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 1.)

§ 11165. As used in this article "child" means a person under the age of 18 years.

(Added by Stats. 1987, c. 1459.)

§ 11165.1. Sexual abuse; sexual assault; sexual exploitation

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

- (a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert),

285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

- (b) Conduct described as “sexual assault” includes, but is not limited to, all of the following:
- (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
 - (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
 - (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.
 - (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
 - (5) The intentional masturbation of the perpetrator's genitals in the presence of a child.
- (c) “Sexual exploitation” refers to any of the following:
- (1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
 - (2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, “person responsible for a child's welfare” means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.
 - (3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(Amended by Stats. 2000, c. 287 (S.B. 1955), § 21.)

§ 11165.2. Neglect; severe neglect; general neglect

As used in this article, “neglect” means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

- (a) “Severe neglect” means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

- (b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

(Added by Stats. 1987, c. 1459, § 7.)

§ 11165.3. Willful cruelty or unjustifiable punishment of a child

As used in this article, "willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(Added by Stats. 1987, c. 1459, § 9.)

§ 11165.4. Unlawful corporal punishment or injury

As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

(Added by Stats. 1987, c. 1459, § 10. Amended by Stats. 1998, c. 39, § 1; Stats. 1993, c. 346 (A.B. 331), § 1.)

§ 11165.5. Abuse in out-of-home care

As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 2; Stats. 2001, c. 133 (A.B. 102), § 1, eff. July 31, 2001.)

§ 11165.6. Child abuse

As used in this article, "child abuse or neglect" includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 4. Amended by Stats. 2001, c. 133 (A.B. 102), § 2, eff. July 31, 2001.)

§ 11165.7. Mandated Reporter

(a) As used in this article, "mandated reporter" is defined as any of the following:

- (1) A teacher.
- (2) An instructional aide.
- (3) A teacher's aide or teacher's assistant employed by any public or private school.
- (4) A classified employee of any public school.
- (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.
- (6) An administrator of a public or private day camp.
- (7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.
- (8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.
- (9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.
- (10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.
- (11) A headstart teacher.
- (12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.
- (13) A public assistance worker.
- (14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.
- (15) A social worker, probation officer, or parole officer.
- (16) An employee of a school district police or security department.
- (17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.
- (18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.
- (19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.
- (20) A firefighter, except for volunteer firefighters.
- (21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.
- (22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

- (23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.
- (24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.
- (25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.
- (26) A state or county public health employee who treats a minor for venereal disease or any other condition.
- (27) A coroner.
- (28) A medical examiner, or any other person who performs autopsies.
- (29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.
- (30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.
- (31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:
 - (A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.
 - (B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.
- (32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.
- (33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.
- (34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.
- (b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.
- (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
- (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
- (e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 5; Stats. 2001, c. 133 (A.B. 102), § 3, eff. July 31, 2001, c. 754 (A.B. 1697), § 4.)

§ 11165.9. Child protective agency

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department, not including a school district police or security department,

county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 8. Amended by Stats. 2001, c. 133 (A.B. 102), § 4, eff. July 31, 2001.)

§ 11165.11. Licensing agency

As used in this article, "licensing agency" means the State Department of Social Services office responsible for the licensing and enforcement of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), the California Child Day Care Act (Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code), and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code), or the county licensing agency which has contracted with the state for performance of those duties.

(Added by Stats. 1987, c. 1459, § 18.)

§ 11165.12. Unfounded report; substantiated report; unsubstantiated report

As used in this article, the following definitions shall control:

- (a) "Unfounded report" means a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.
- (b) "Substantiated report" means a report which is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6.
- (c) "Inconclusive report" means a report which is determined by the investigator who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 10.)

§ 11165.13. Maternal substance abuse; positive toxicology screen at time of delivery; basis for reporting child abuse or neglect; assessment of needs

For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's

substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 11.)

§ 11166. Report; duty; time

- (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.
 - (1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.
 - (2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.
 - (3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.
- (b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that fine and punishment.
- (c)
 - (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.
 - (2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.
- (d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:
 - (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether

- between persons of the same or opposite sex or between humans and animals.
- (2) Penetration of the vagina or rectum by any object.
 - (3) Masturbation for the purpose of sexual stimulation of the viewer.
 - (4) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.
 - (5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.
- (e) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.
- (f) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.
- (g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.
- (2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.
- (3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.
- (h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.
- (i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare

knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 16; Stats. 2001, c. 133 (A.B. 102), § 5, eff. July 31, 2001.)

§ 11166.05. Mandated reporter; knowledge or reasonable suspicion of mental suffering inflicted upon a child; duty to report

Any mandated reporter who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(Added by Stats. 2001, c. 133 (AB 102), § 6, eff. July 31, 2001.)

§ 11166.1. Agency notice to licensing officer and attorney; alleged child abuse or death

- (a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:
- (1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.
 - (2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

- (b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 17.)

§ 11166.2. Telephoned report of child abuse to licensing agencies; written reports

In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone, fax, or electronic transmission to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written

report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 18; Stats. 2001, c. 133 (A.B. 102), § 7, eff. July 31, 2001.)

§ 11166.3. Legislative intent; cooperative arrangements for investigation; written findings; report

- (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel in the manner specified in Section 859.
- (b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of subdivision (a) of Section 1502, Section 1596.750 or 1596.76 of the Health and Safety Code, and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

(Amended by Stats. 2000, c. 135 (A.B. 2539), § 139; Stats. 2000, c. 916 (A.B. 1241), § 19; Stats. 2001, c. 133 (A.B. 102), § 8, eff. July 31, 2001.)

§ 11166.5. Required statements of mandated reporters

- (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

- (b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars (\$1,000), or by both that imprisonment and fine.
- (c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.
- (d) On and after January 1, 1993, any child visitation monitor, as defined in paragraph (30) of subdivision (a) of Section 11165.7, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 20; Stats. 2001, c. 133 (A.B. 102), § 9, eff. July 31, 2001.)

§ 11166.7. Interagency child death team; autopsy protocol

- (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.
- (b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.
- (c) In developing an interagency child death team and an autopsy protocol, each county, working in

consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

- (1) Experts in the field of forensic pathology.
- (2) Pediatricians with expertise in child abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys.
- (6) Child protective services staff.
- (7) Law enforcement personnel.
- (8) Representatives of local agencies which are involved with child abuse or neglect reporting.
- (9) County health department staff who deals with children's health issues.
- (10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 21; Stats. 2001, c. 133 (A.B. 102), § 10, eff. July 31, 2001.)

§ 11166.8. Interagency child death team protocol

Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 22.)

§ 11167. Report; contents; confidentiality of identity of persons reporting

- (a) Reports of suspected child abuse or neglect pursuant to Section 11166 shall include, if known, the name, business address, and telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter; the child's name and address, present location, and, where applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.
- (b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.
- (c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.
- (d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to

subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

- (2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

- (e) Persons who may report pursuant to subdivision (e) of Section 11166 are not required to include their names.

(Amended by Stats. 2000, c.916 (A.B. 1241), § 24; Stats. 2001, c. 133 (A.B. 102), § 13, eff. July 31, 2001.)

§ 11167.5. Confidentiality of reports; violations; disclosure

- (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars (\$500), or by both that imprisonment and fine.
- (b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:
 - (1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.
 - (2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.
 - (3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.
 - (4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.
 - (5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.
 - (6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.
 - (7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.
 - (8) Coroners and medical examiners when conducting a postmortem examination of a child.
 - (9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

- (10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.
 - (11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim in order to maintain confidentiality as required by law.
 - (12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (1) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (2) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.
 - (13) Persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170. Disclosure under this section shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Nothing in this section prohibits a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim to maintain confidentiality as required by law.
 - (14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.
- (c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in Section 11165.8, pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).
 - (d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.
 - (e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 25.)

§ 11169. Reports of department of justice; investigations; unfounded reports; immunities

- (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.
- (b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.
- (c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.
- (d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 27; Stats. 2001, c. 133 (A.B. 102), § 14, eff. July 31, 2001.)

§ 11170. Indexed reports; notice to child protective agencies or district attorneys; availability of information; notice to parents or guardians

- (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.
- (2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.
- (3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time

period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

- (b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.
- (2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.
- (3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisory or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.
- (4) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.
- (5) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.
- (6) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator

responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

- (B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.
- (7) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars (\$15).
- (B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.
 - (C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).
- (c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

- (d) The department shall make available any information maintained pursuant to Section 11169 to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.
- (e) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (b) of Section 11167.5.
- (f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 28; Stats. 2001, c. 133 (A.B. 102), § 15, eff. July 31, 2001.)

§ 11171.5. X-rays without parental consent; application for order; liability for costs

- (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent. Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.
- (b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.
- (c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 30.)

§ 11172. Immunity from liability; liability for false reports; attorneys fees; failure to report; offense

- (a) No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.
- (b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.
- (c) The Legislature finds that even though it has provided immunity from liability to persons required or authorized to make reports pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required or authorized reports. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

- (d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 31; Stats. 2001, c. 133 (A.V. 102), § 16, eff. July 31, 2001.)

§ 11174. Guidelines

The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of abuse in out-of-home care, as defined

in Section 11165.5, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(Added by Stats. 1980, c. 1071, § 4. Amended by Stats. 1981, c. 435, § 7, eff. Sept. 12, 1981; Stats. 1982, c. 162, § 4, eff. April 26, 1982, Stats. 1985, c. 1582, §3; c. 269, § 5., Stats. 1988, c. 269, §5.)

§ 11174.1. Guidelines for investigation of child abuse; regulations; orientation and training of inspectors

- (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines .
- (b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:
 - (1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.
 - (2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.
- (c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 32.)

§ 11174.3. Interviewing victim at school; presence of school staff member; confidentiality; admissibility of evidence; informing school districts and agency employees of section requirements

- (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not

discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

- (b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

(Amended by Stats. 2000, c. 916 (A.B. 1241), § 33.)

WELFARE AND INSTITUTIONS CODE

§ 5150. Dangerous or gravely disabled person; taking into custody; application; basis of probable cause; liability

When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

(Added by Stats. 1967, c. 1667, p. 4047, § 36, operative July 1, 1969. Amended by Stats. 1968, c. 1374, p. 2643, § 16, operative July 1, 1969; Stats. 1970, c. 516, p. 1005, § 7; Stats. 1971, c. 1593, p. 3337, § 368, operative July 1, 1973; Stats. 1975, c. 960, p. 2243, § 2; Stats. 1977, c. 1252, p. 4567, § 554, operative July 1, 1978; Stats. 1980, c. 968, p. 3064, § 1.)

§ 5250. Time limitation or certification for intensive treatment; grounds for certification

If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

- (a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.
- (b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.
- (c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.
- (d)
 - (1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.
 - (2) However, unless they specifically indicate in writing their willingness and ability to

help, family, friends, or others shall not be considered willing or able to provide this help.

- (3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing or shelter.

(Added by Stats. 1982, c. 1598, § 4. Amended by Stats. 1989, c. 999, § 1.)

§ 5325. List of rights; posting; waiver

Each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

- (a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.
- (b) To have access to individual storage space for his or her private use.
- (c) To see visitors each day.
- (d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
- (e) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.
- (f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.
- (g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:
 - (1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.
 - (2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.
 - (3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Mental Health shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

- (h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.
- (i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Mental Health to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook.

The State Department of Mental Health shall prepare and provide the forms specified in this section and in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

(Added by Stats. 1972, c. 1055, p. 1940, V 3, operative July 1, 1973. Amended by Stats. 1974, c. 1534, p. 3459, § 1; Stats. 1976, c. 1109, p. 4992, V 1.5; Stats. 1977, c. 1252, p. 4570, V 561, operative July 1, 1978; Stats. 1977, c. 1021, p. 3060, § 2; Stats. 1978, c. 429, p. 1454, § 206, eff. July 17, 1978, operative July 1, 1978; Stats. 1981, c. 841, p. 3231, § 2.)

§ 5325.1. Same rights and responsibilities guaranteed others; discrimination by programs or activities receiving public funds; additional rights

Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

- (a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.
- (b) A right to dignity, privacy, and humane care.
- (c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.
- (d) A right to prompt medical care and treatment.
- (e) A right to religious freedom and practice.
- (f) A right to participate in appropriate programs of publicly supported education.
- (g) A right to social interaction and participation in community activities.
- (h) A right to physical exercise and recreational opportunities.
- (i) A right to be free from hazardous procedures.

(Added by Stats. 1978, c. 1320, p. 4319, § 1.)

§ 5328. Confidential information and records; disclosure; consent

All information and records obtained in the course of providing services under Division 4

(commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

- (a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.
- (b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.
- (c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.
- (d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.
- (e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

Date

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

- (f) To the courts, as necessary to the administration of justice.
- (g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.
- (h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

- (i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.
- (j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.
- (k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.
- (l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.
- (m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.
- (n) To a committee established in compliance with Sections 4070 and 5624.
- (o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.
- (p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.
- (q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.
- (r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

- (s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.
- (t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).
- (2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).
- (3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.
- (u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.
- (2) For purposes of paragraph (1), a facility means all of the following:
 - (A) A state hospital, as defined in Section 4001.
 - (B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.
 - (C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.
 - (D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.
 - (E) A mental health rehabilitation center, as described in Section 5675.
 - (F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.
- (v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.
- (w) This section shall not be limited by Section 5150.05 or 5332.

(Amended by Stats.1998, c. 148 (A.B.302), § 1; Stats.2001, c. 37 (A.B.213), § 1; Stats.2001, c. 506 (A.B.1424), § 8.5.)

ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

§ 15610.05. Abandonment

“Abandonment” means that desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3.)

§ 15610.06. Abduction

“Abduction” means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

(Added by Stats. 1997, c. 663 (S.B. 628), § 2.)

§ 15610.07. Abuse of an elder or a dependent adult

“Abuse of an elder or a dependent adult” means either of the following:

- (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering.
- (b) The deprivation by a care custodian of goods and services which are necessary to avoid physical harm or mental suffering.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3. Amended by Stats. 1997, c. 663 (S.B. 628), § 3; Stats. 1998, c. 946 (S.B. 2199), § 2.)

§ 15610.17. Care custodians

“Care custodian” means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

- (a) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
- (b) Clinics.
- (c) Home health agencies.
- (d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.
- (e) Adult day health care centers and adult day care.
- (f) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.
- (g) Independent living centers.
- (h) Camps.
- (i) Alzheimer’s Disease day care resource centers.

- (j) Community care facilities, as defined by Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
- (k) Respite care facilities.
- (l) Foster homes.
- (m) Vocational rehabilitation facilities and work activity centers.
- (n) Designated area agencies on aging.
- (o) Regional centers for persons with developmental disabilities.
- (p) State Department of Social Services and State Department of Health Services licensing divisions.
- (q) County welfare departments.
- (r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.
- (s) Office of the long-term care ombudsman.
- (t) Offices of public conservators, public guardians, and court investigators.
- (u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:
 - (1) The federal Developmental Disability Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.
 - (2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with mental illnesses.
- (v) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.

(Added by Stats. 1994, c. 594 (S.B. 1681), §3. Amended by Stats. 1998, c. 946 (S.B. 2199), §4.)

§ 15610.23. Dependent adult

- (a) "Dependent adult" means any person residing in this state, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.
- (b) "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3.)

§ 15610.27. Elder

"Elder" means any person residing in this state, 65 years of age or older.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3.)

§ 15610.30. Financial abuse

- (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:
- (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.
- (1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.
 - (2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).
- (c) For purposes of this section, “representative” means a person or entity that is either of the following:
- (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
 - (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

(Added by Stats.1994, c. 594 (S.B.1681), § 3. Amended by Stats.1997, c. 724 (A.B.1172), § 37; Stats.1998, c. 946 (S.B.2199), § 5; Stats.2000, c. 813 (S.B.1742), § 2; Stats.2000, c. 442 (A.B.2107), § 5.)

§ 15610.37. Health practitioners

“Health practitioner” means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, or intern, marriage, family and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3.)

§ 15610.55. Multidisciplinary personnel team

- (a) “Multidisciplinary personnel team” means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse or elderly or dependent persons and

who are qualified to provide a broad range of services related to abuse of elderly or dependent persons, as defined in Section 15753.5.

- (b) A multidisciplinary personnel team may include, but is not limited to, all of the following:
 - (1) Psychiatrist, psychologists, or other trained counseling personnel.
 - (2) Police officers or other law enforcement agents.
 - (3) Medical personnel with sufficient training to provide health services.
 - (4) Social workers with experience or training in prevention of abuse of elderly or dependent persons.
 - (5) Public guardians.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3. Amended by Stats. 1998, c. 946 (S.B. 2199), § 6.)

§ 15610.57. Neglect

- (a) "Neglect" means either of the following:
 - (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
 - (2) The negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise.
- (b) Neglect includes, but is not limited to, all of the following:
 - (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
 - (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
 - (3) Failure to protect from health and safety hazards.
 - (4) Failure to prevent malnutrition or dehydration.
 - (5) Failure of a person to provide the needs specified in paragraphs (1) to (4), inclusive, for themselves due to ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3. Amended by Stats. 1998, c. 946 (S.B. 23199), § 7.)

§ 15610.63. Physical Abuse

"Physical abuse" means any of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, that means any of the following:
 - (1) Sexual battery, as defined in Section 243.4 of the Penal Code.
 - (2) Rape, as defined in Section 261 of the Penal Code.
 - (3) Rape in concert, as described in Section 264.1 of the Penal Code.
 - (4) Spousal rape, as defined in Section 262 of the Penal Code.
 - (5) Incest, as defined in Section 285 of the Penal Code.
 - (6) Sodomy, as defined in Section 286 of the Penal Code.

- (7) Oral copulation, as defined in Section 288a of the Penal Code.
- (8) Sexual penetration, as defined in Section 289 of the Penal Code.
- (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 - (1) For punishment.
 - (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
 - (3) For any purpose not authorized by the physician and surgeon.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 3. Amended by Stats. 1996, c. 1075 (S.B. 1444), § 22; Stats. 2000, c. 287 (S.B. 1955), § 29.)

§ 15630. Mandated reporters; known or suspected abuse; telephone reports; failure to report; penalty

- (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.
- (b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects that abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:
 - (A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or to a local law enforcement agency.

Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

- (B) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as practical.

- (C) If the abuse has occurred any place other than one described in paragraph subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.
- (2) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist are defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:
- (i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.
 - (ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.
 - (iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.
 - (iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.
- (B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.
- (3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:
- (i) The mandated reporter is aware that there is a proper plan of care.
 - (ii) The mandated reporter is aware that the plan of care was properly provided or executed.
 - (iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).
 - (iv) The mandated reporter reasonably believes that the injury was not the result of abuse.
- (B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.
- (c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.
- (2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as practical.

- (3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.
 - (4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.
 - (5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.
- (d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.
- (e) A telephone report of a known or suspected instance of elder abuse or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.
- (f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrator of reports may be established, provided they are not inconsistent with this chapter.
- (g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall immediately upon request, provide a copy of its investigative report concerning the report matter to that county adult protective services agency.
- (2) Whenever this section required a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.
- (3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.
- (h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to

report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, is punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars (\$5,000) or by both that fine and imprisonment.

(Amended by Stats. 1994, c. 594 (S.B. 1681), § 7. Amended by Stats. 1995, c. 813 (A.B. 1836), § 1; Stats. 1998, c. 946 (S.B. 2199), § 8; Stats. 1998, c. 980 (A.B. 1780), § 1; Stats. 1999, c. 236 (A.B. 739), § 1.)

§ 15631. Nonmandated reporters; known or suspected abuse

- (a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.
- (b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 9.)

§ 15632. Physician-patient privilege; psychotherapist-patient privilege

- (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.
- (b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 11.)

§ 15633. Confidentiality of reports; disclosure

- (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment.
- (b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:
 - (1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under 15633.5.
 - (2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.
(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person

disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

- (c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.

(Added by Stats.1994, c. 594 (S.B.1681), § 14. Amended by Stats.1998, c. 946 (S.B.2199) § 9; Stats.1998, c. 980 (A.B.1780), § 2.)

§ 15633.5. Information given to investigator; reporting person's identity; confidentiality

- (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, or the Bureau of Medi-Cal Fraud or investigators of the Department of Consumer Affairs, Division of Investigation who are investigating the known or suspected case of elder or dependent adult abuse.
- (b) The identity of all persons who report under this chapter shall be confidential and disclosed only among adult protective services agencies, long-term care ombudsman programs, licensing agencies, local law enforcement agencies, the bureau, and the Division of Investigation to counsel representing an adult protective services agency, long-term care ombudsman program, licensing agency, or a local law enforcement agency, by the bureau to the district attorney in a criminal prosecution, when persons reporting waive confidentiality, or by court order.
- (c) Notwithstanding subdivisions (a) and (b), any person reporting pursuant to Section 15631 shall not be required to his or her name in the report.

(Added by Stats.1994, c. 594 (S.B.1681), § 16. Amended by Stats.1998, c. 970 (A.B.2802), § 211.)

§ 15634. Civil or criminal liability of reporter

- (a) No care custodian, health practitioner or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.
- (b) Any care custodian, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with

access to the victim of a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of providing that access.

- (c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.
- (d) Any person who fails to report an instance of elder or dependent adult abuse, as required by this article, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, by a fine of not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(Added by Stats. 1985, c. 1164, § 11, eff. Sept. 28, 1985. Amended by Stats. 1986, c. 769, § 14, eff. Sept. 15, 1986; Stats. 1990, c. 241 (S.B. 1911), § 2.)

§ 15637. Privileged information

In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported pursuant to this chapter. Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(Added by Stats. 1985, c. 1164, § 13. Eff. Sept. 28, 1985.)

§ 15640. Abuse instances requiring reports; referring agencies; known or suspected criminal activity; abuse by licensed health practitioners; abuse at long-term care facilities; neglect

- (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report, by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this

subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

- (2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.
- (b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.
 - (c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.
 - (d) A long-term care ombudsman coordinator must report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.
 - (e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

- (f) County adult protective services agencies, long-term care ombudsman program, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 20. Amended by stats. 1995, c. 91 (S.B. 975), § 188; Stats. 1998, c. 946 (S.B. 2199), § 9.5.)

§ 15650. Investigation of reports of known or suspected abuse; responsibility; other involved public agencies; inventories of services available to help victims

- (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the long-term care ombudsman program, for instances of physical and financial abuse, the local law enforcement agency, and for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman program and the bureau.
- (b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency and the local law enforcement agency unless another public agency is given responsibility for investigation in that jurisdiction.
- (c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division and their authorized representatives.
- (d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of Mental Health and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs and local law enforcement agencies.
- (e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, follow up basis.

The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

- (f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 21. Amended by Stats. 1998, c. 946 (S.B. 2199), § 10.)

§ 15658. Written abuse report forms; contents; timing

- (a) (1) The written abuse reports required for the reporting of abuse, as defined in this chapter, shall be submitted on forms adopted by the State Department of Social Services after consultation with representatives of the various law enforcement agencies, the California Department of Aging, the State Department of Developmental Services, the State Department of Mental Health, the bureau, professional medical and nursing agencies, hospital associations and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.
- (2) The forms required by this section shall contain the following items:
- (A) The name, address, telephone number, and occupation of the person reporting.
 - (B) The name and address of the victim.
 - (C) The date, time and place of the incident.
 - (D) Other details, including the reporter's observations and beliefs concerning the incident.
 - (E) Any statement relating to the incident made by the victim.
 - (F) The name of any individuals believed to have knowledge of the incident.
 - (G) The name of the individuals believed to be responsible for the incident and their connection to the victim.
- (b) (1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.
- (2) The county's report to the department shall not include reports it received from the long-term care ombudsman program pursuant to subdivision (c).
- (3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, abandonment, isolation, and financial abuse, and other abuse it receives from county adult protective services agencies.
- (c) Each long-term care ombudsman program shall report to the office of the Long-Term Care Ombudsman of the California Department of Aging monthly on the reports it receives pursuant to this chapter with a copy sent to the county adult protective services agency. The office of the state ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The report shall be on forms adopted by the department and the office of the state ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 24. Amended by stats. 1998, c. 946 (S.B. 2199), § 11.5.)

§ 15659. Signed statements as prerequisite to employment; care custodians health practitioners, or adult protective services agency and law enforcement agency employees; professions required to report

- (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.
- (b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1995, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (a).
- (c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.
- (d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a professions or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person.
- (e) As an alternative to the procedure required by subdivision (d), a state agency may cause the require statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.
- (f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report abuse of elders or dependent adults pursuant to Section 15630 or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

(Added by Stats. 1994, c. 594 (S.B. 1681), § 25. Amended by Stats. 1998, c. 946 (S.B. 2199), § 12.)

EVIDENCE CODE

§ 901. Proceeding

"Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1010. Psychotherapist

As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:

- (a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.
- (b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
- (c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.
- (d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.
- (e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- (f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.
- (g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code.
- (h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.
- (i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.
- (j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section

4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.

- (k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.
- (l) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.
- (m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

(Amended by Stats.2001, c. 142 (S.B.716), § 1; Stats.2001, c. 420 (A.B.1253), § 1, eff. Oct. 2, 2001; Stats.2001, c. 420 (A.B.1253), § 1.5, eff. Oct. 2, 2001, operative Jan. 1, 2002.)

§ 1010.5. Privileged communication between patient and educational psychologist

A communication between a patient and an educational psychologist, licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, shall be privileged to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist described in subdivisions (c), (d), and (e) of Section 1010.

(Added by Stats. 1985, c. 545, § 1.)

§ 1011. Patient

As used in this article, "patient" means a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition or who submits to an examination of his mental or emotional condition for the purpose of scientific research on mental or emotional problems.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1012. Confidential communication between patient and psychotherapist

As used in this article, "confidential communication between patient and psychotherapist" means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, as far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats. 1967, c. 650, p. 2006, § 5; Stats. 1970, c. 1396, p. 2625, § 2; Stats. 1970, c. 1397, p. 2627, § 2.)

§ 1013. Holder of the privilege

As used in this article, “holder of the privilege” means:

- (a) The patient when he has no guardian or conservator.
- (b) A guardian or conservator of the patient when the patient has a guardian or conservator.
- (c) The personal representative of the patient if the patient is dead.

(Stats. 1965, c. 299, § 2, operative January 1, 1967.)

§ 1014. Psychotherapist-patient privilege; application to individuals and entities

Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the psychotherapist at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage, family, and child counseling corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, or a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word “persons” as used in this subdivision includes partnerships, corporations, associations and other groups and entities.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats. 1969, c. 1436, p. 2943, § 1; Stats. 1972, c. 1286, p. 2569, § 6; Stats. 1989, c. 1104, § 38; Stats. 1990, c. 605 (S.B. 2245), § 1; Stats. 1994, c. 1010 (S.B. 2053), § 106.)

§ 1015. When psychotherapist required to claim privilege

The psychotherapist who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1016. Exception; Patient-litigant exception

There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by:

- (a) The patient;
- (b) Any party claiming through or under the patient;
- (c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

- (d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.

(Stats. 1965, c. 299, § 2, operative January 1, 1967.)

§ 1017. Exception: Psychotherapist

- (a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.
- (b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats. 1967, c. 650, p. 2007, § 6; Stats. 1987, c. 687, § 1.)

§ 1018. Exception: Crime or tort

There is no privilege under this article if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1019. Exception: Parties claiming through deceased patient

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1020. Exception: Breach of duty arising out of psychotherapist-patient relationship

There is no privilege under this article as to a communication relevant to an issue of breach, by the psychotherapist or by the patient, of a duty arising out of the psychotherapist-patient relationship.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1023. Exception: Proceeding to determine sanity of criminal defendant

There is no privilege under this article in a proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code initiated at the request of the defendant in a criminal action to determine his sanity.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1024. Exception: Patient dangerous to himself or others

There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1025. Exception: Proceeding to establish competence

There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1026. Exception: Required report

There is no privilege under this article as to information that the psychotherapist or the patient is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection.

(Stats. 1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1027. Privilege nonexistent; patient child under 16 or victim of crime

There is no privilege under this article if all of the following circumstances exist:

- (a) The patient is a child under the age of 16.
- (b) The psychotherapist has reasonable cause to believe that the patient has been the victim of a crime and that disclosure of the communication is in the best interest of the child.

(Added by Stats. 1970, c. 1397, p. 2627, § 3.)

CIVIL CODE

§ 43.92. Psychotherapists; duty to warn of threatened violent behavior of patient; immunity from monetary liability.

- (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.
- (b) If there is a duty to warn and protect under the limited circumstances specified above, the duty shall be discharged by the psychotherapist making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

(Added by Stats. 1985, c. 737, § 1.)

§ 43.93. Psychotherapists; patient's cause of action for sexual contact; definitions

- (a) For the purposes of this section the following definitions are applicable:
 - (1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.
 - (2) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, marriage, family and child counselor, a registered marriage, family and child counselor intern or trainee, an educational psychologist, an apprentice social worker, or clinical social worker.
 - (3) "Sexual contact" means the touching of an intimate part of another person. "Intimate part" and "touching" have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.
 - (4) "Therapeutic relationship" exists during the time the patient or client is rendered professional service by the therapist.
 - (5) "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.
- (b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:
 - (1) During the period the patient was receiving psychotherapy from the psychotherapist.
 - (2) Within two years following termination of therapy.
 - (3) By means of therapeutic deception.
- (c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.
- (d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:
 - (1) The plaintiff claims damage to sexual functioning.

- (2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

(Added by Stats. 1987, c. 1474, § 1. Amended by Stats. 1992, c. 890 (S.B. 1394), § 5; Stats. 1993, c. 589 (A.B. 2211), § 19.)

CONFIDENTIALITY OF MEDICAL INFORMATION ACT

§ 56.10. Authorization; necessity; exceptions (Text of this section will become inoperative January 1, 2003 – new version of text follows)

- (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).
- (b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:
 - (1) By a court pursuant to an order of that court.
 - (2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.
 - (3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.
 - (4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.
 - (5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.
 - (6) By a search warrant lawfully issued to a governmental law enforcement agency.
 - (7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.
 - (8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.
 - (9) When otherwise specifically required by law.
- (c) A provider of health care, or a health care service plan may disclose medical information as follows:
 - (1) The information may be disclosed to providers of health care, health care service plans,

Contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

- (2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.
- (3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.
- (4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractor's, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.
- (5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.
- (6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).
- (7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.
- (8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:
 - (A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the

- employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.
- (B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.
- (9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.
- (10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.
- (11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.
- (12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.
- (13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.
- (14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.
- (15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.
- (16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.
- (17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's

contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

- (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.
- (e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.
- (f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

(Amended by Stats.1983, c. 1246, § 1; Stats.1984, c. 442, § 1; Stats.1984, c. 967, § 2; Stats.1986, c. 633, § 1; Stats.1990, c. 911 (S.B.2328), § 1; Stats.1991, c. 591 (A.B.1179), § 1; Stats.1992, c. 427 (A.B.3355), § 9; Stats.1992, c. 572 (S.B.1455), § 1; Stats.1993, c. 659 (A.B.525), § 1; Stats.1994, c. 700 (S.B.1457), § 3; Stats.1999, c. 526 (S.B.19), § 2; Stats.2000, c. 1065 (A.B.2414), § 1; Stats.2000, c. 1066 (S.B.1903), § 2; Stats.2000, c. 1067 (S.B.2094), § 2.3; Stats.2000, c. 1068 (A.B.1836), § 1.8.)

§ 56.10. Authorization; necessity; exceptions. (Text of this section will become operative January 1, 2003)

- (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).
- (b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:
 - (1) By a court pursuant to an order of that court.
 - (2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.
 - (3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

- (4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.
 - (5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.
 - (6) By a search warrant lawfully issued to a governmental law enforcement agency.
 - (7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.
 - (8) When otherwise specifically required by law.
- (c) A provider of health care, or a health care service plan may disclose medical information as follows:
- (1) The information may be disclosed to providers of health care, health care service plans, contractors or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.
 - (2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.
 - (3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.
 - (4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractor's or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.
 - (5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical

information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

- (6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.
- (7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.
- (8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:
 - (A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.
 - (B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.
- (9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.
- (10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.
- (11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.
- (12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.
- (13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

- (14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.
 - (15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.
 - (16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.
 - (17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.
- (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.
 - (e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.
 - (f) This section shall become operative January 1, 2003.

(Amended by Stats. 1983, c. 1246, § 1; Stats. 1984, c. 442, § 1; Stats. 1984, c. 967, § 2; Stats. 1986, c. 633, § 1; Stats. 1990, c. 911 (S.B. 2328), § 1; Stats. 1991, c. 591 (A.B. 1179), § 1; Stats. 1992, c. 427 (A.B. 3355), § 9; Stats. 1992, c. 572 (S.B. 1455), § 1; Stats. 1993, c. 659 (A.B. 525), § 1; Stats. 1994, c. 700 (S.B. 1457), § 3; Stats. 1999, c. 526 (S.B. 19), § 2; Stats. 2000, c. 1065 (A.B. 2414), § 1; Stats. 2000, c. 1066 (S.B. 1903), § 2; Stats. 2000, c. 1067 (S.B. 2094), § 2.3; Stats. 2000, c. 1068 (A.B. 1836), § 1.8. Added by Stats 2000, c. 1068 (AB 1836), § 1.16, operative Jan. 1, 2003.)

§ 56.11. Form and Contents of Authorization.

Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care, a health care service plan, or contractor shall be valid if it:

- (a) Is handwritten by the person who signs it or is in typeface no smaller than 8-point type.
- (b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.
- (c) Is signed and dated by one of the following:
 - (1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).
 - (2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, a health care service plan, or a contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).
 - (3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.
 - (4) The beneficiary or personal representative of a deceased patient.
- (d) States the specific uses and limitations on the types of medical information to be disclosed.
- (e) States the name or functions of the provider of health care, health care service plan, or contractor that may disclose the medical information.
- (f) States the name or functions of the persons or entities authorized to receive the medical information.
- (g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.
- (h) States a specific date after which the provider of health care, health care service plan, or contractor is no longer authorized to disclose the medical information.
- (i) Advises the person signing the authorization of the right to receive a copy of the authorization.

(Amended by Stats.1999, c. 526 (S.B.19), § 4; Stats.2000, c. 1066 (S.B.1903), § 3.)

§ 56.20. Confidentiality; Necessity of authorization.

- (a) Each employer who receives medical information shall establish appropriate procedures to ensure the confidentiality and protection from unauthorized use and disclosure of that information. These procedures may include, but are not limited to, instruction regarding confidentiality of employees and agents handling files containing medical information, and security systems restricting access to files containing medical information.
- (b) No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization under this part. However, nothing in this section shall prohibit an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization under this part.
- (c) No employer shall use, disclose, or knowingly permit its employees or agents to use or disclose medical information which the employer possesses pertaining to its employees without the patient having first signed an authorization under Section 56.11 or Section 56.21 permitting such use or disclosure, except as follows:
 - (1) The information may be disclosed if the disclosure is compelled by judicial or administrative process or by any other specific provision of law.
 - (2) That part of the information which is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment may be used or disclosed in connection with that proceeding.
 - (3) The information may be used only for the purpose of administering and maintaining employee benefit plans, including health care plans and plans providing short-term and long-term disability income, workers compensation and for determining eligibility for paid and unpaid leave from work for medical reasons.
 - (4) The information may be disclosed to a provider of health care or other health care professional or facility to aid the diagnosis or treatment of the patient, where the patient or other person specified in subdivision (c) of Section 56.21 is unable to authorize the disclosure.
- (d) If an employer agrees in writing with one or more of its employees or maintains a written policy which provides that particular types of medical information shall not be used or disclosed by the employer in particular ways, the employer shall obtain an authorization for such uses or disclosures even if an authorization would not otherwise be required by subdivision (c).

(Added by Stats 1981 c. 782, § 2.)

§ 56.21. Authorization for disclosure by employer

An authorization for an employer to disclose medical information shall be valid if it:

- (a) Is handwritten by the person who signs it or is in typeface no smaller than 8-point type.
- (b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no purpose other than to execute the authorization.
- (c) Is signed and dated by one of the following:
 - (1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of

furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

- (2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information which pertains to a competent minor and which was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.
 - (3) The beneficiary or personal representative of a deceased patient.
- (d) States the limitations, if any, on the types of medical information to be disclosed.
 - (e) States the name or functions of the employer or person authorized to disclose the medical information.
 - (f) States the names or functions of the persons or entities authorized to receive the medical information.
 - (g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.
 - (h) States a specific date after which the employer is no longer authorized to disclose the medical information.
 - (i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

(Added Stats 1981, c. 782, § 2.)

FAMILY CODE

§ 6920. Minor's capacity to consent to medical or dental care without consent of parent or, guardian.

Subject to the limitations provided in this chapter, notwithstanding any other provision of law, a minor may consent to the matters provided in this chapter, and the consent of the minor's parent or guardian is not necessary.

(Stats 1992, c. 162 (AB 2650), § 10, operative January 1, 1994.)

§ 6921. Minor's consent not subject to disaffirmance

A consent given by a minor under this chapter is not subject to disaffirmance because of minority.

(Stats 1992, c. 162 (AB 2650), § 10, operative January 1, 1994.)

§ 6922. Consent by minor 15 or older living separately

- (a) A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied:
- (1) The minor is 15 years of age or older.
 - (2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence.
 - (3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.
- (b) The parents or guardian are not liable for medical care or dental care provided pursuant to this section.
- (c) A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

(Stats 1992, c. 162 (AB 2650), § 10, operative January 1, 1994.)

§ 6924. Mental health treatment or counseling services; involvement of parents or guardians; liability of parents or guardians

- (a) As used in this section:
- (1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:
 - (A) A governmental agency.
 - (B) A person or agency having a contract with a governmental agency to provide the services.
 - (C) An agency that receives funding from community united funds.
 - (D) A runaway house or crisis resolution center.
 - (E) A professional person, as defined in paragraph (2).

- (2) "Professional person" means any of the following:
- (A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.
 - (B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
 - (C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.
 - (D) A credentialed school psychologist as described in Section 49424 of the Education Code.
 - (E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.
 - (F) The chief administrator of an agency referred to in paragraph (1) or (3).
 - (G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code.
- (3) "Residential shelter services" means any of the following:
- (A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.
 - (B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).
- (b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:
- (1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.
 - (2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.
- (c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.
- (d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.
- (e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment

for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

- (f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

(Amended by Stats.2000, c. 519 (A.B.2161), § 1.)

§ 6925. Consent by minor to pregnancy. Treatment.

- (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.
- (b) This section does not authorize a minor:
 - (1) To be sterilized without the consent of the minor's parent or guardian.
 - (2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123540 of the Health and Safety Code.

(Amended by Stats. 1996, c. 1023 (S.B. 1497), § 46, eff. Sept. 29, 1996.)

§ 6926. Consent by minor to treatment for communicable disease.

- (a) A minor who is 12 years of age or older and who may have come into contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation adopted pursuant to law to be reported to the local health officer, or is a related sexually transmitted disease, as may be determined by the State Director of Health Services.
- (b) The minor's parents or guardian are not liable for payment for medical care provided pursuant to this section.

(Stats. 1992 c. 162 (AB 2650), § 10, operative Jan. 1994.)

§ 6927. Consent by rape victim to treatment.

A minor who is 12 years of age or older and who is alleged to have been raped may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.

(Stats. 1992 c. 162 (AB 2650), § 10 operative Jan. 1, 1994.)

§ 6928. Consent by assault victim to treatment.

- (a) "Sexually assaulted" as used in this section includes, but is not limited to, conduct coming within Section 261, 286, or 288a of the Penal Code.
- (b) A minor who is alleged to have been sexually assaulted may consent to medical care related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.
- (c) The professional person providing medical treatment shall attempt to contact the minor's parent or guardian and shall note in the minor's treatment record the date and time the professional person attempted to contact the parent or guardian and whether the attempt was successful or

unsuccessful. This subdivision does not apply if the professional person reasonably believes that the minor's parent or guardian committed the sexual assault on the minor.

(Stats. 1992 c. 162 (AB 2650), § 10, operative Jan. 1, 1994.)

§ 6929. Consent by a minor to drug or alcohol treatment.

- (a) As used in this section:
 - (1) "Counseling" means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.
 - (2) "Drug or alcohol" includes, but is not limited to, any substance listed in any of the following:
 - (A) Section 380 or 381 of the Penal Code.
 - (B) Division 10 (commencing with Section 11000) of the Health and Safety Code.
 - (C) Subdivision (f) of Section 647 of the Penal Code.
 - (3) "LAAM" means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.
 - (4) "Professional person" means a physician and surgeon, registered nurse, psychologist, clinical social worker, or marriage, family, and child counselor.
- (b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem.
- (c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.
- (d) The minor's parents or guardian are not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.
- (e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a Program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.
- (f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.
- (g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician shall disclose medical information concerning such care to the minor's

parents or legal guardian upon their request, even if the minor child does not consent to disclosure, without liability for such disclosure.

(Stats. 1995, c. 455 (A.B.1113), § 1, eff. Sept. 5, 1995; Stats.1996, c. 656 (A.B.2883), § 1.)

HEALTH AND SAFETY CODE

§120800. Legislative Intent

The intent of the Legislature in enacting this chapter is as follows:

- (a) To fund specified pilot AIDS education programs.
- (b) To fund pilot projects to demonstrate the value of noninstitutional health care services such as hospice, home health, and attendant care in controlling costs and providing humane care to people with AIDS and AIDS-related conditions.
- (c) To fund clinical research.
- (d) To fund the development of a AIDS Mental Health Project.
- (e) To fund specified needs assessments, studies, and program evaluations.
- (f) To authorize the use of funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for preventive education for individuals who are seropositive as a result of antibody testing.
- (g) To promote broad-based support for AIDS programs by encouraging community level networking and coordination of efforts among private sector, nonprofit, and public service agencies as well as health care professionals and provider of essential services.
- (h) To promote an aggressive community based HIV infection prevention program in all communities and areas where behaviors and prevalence indicate high risk of HIV infection, and to encourage local programs to involve racial and ethnic minorities in a leading role to plan the development, implementation, and evaluation of preventive education, HIV testing, delivery of care, and research activities that are necessary to the formation of a comprehensive, community-based, culturally sensitive HIV infection prevention strategy.
- (i) To promote education of health care practitioners concerning new clinical manifestations of HIV, particularly among women and children.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 120975. Privacy rights of persons subject to AIDS blood tests

To protect the privacy of individuals who are the subject of blood testing for antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) the following shall apply: Except as provided in Section 1603.1 or 1603.3, as amended by Chapter 23 of the Statutes of 1985, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify an individual who is the subject of a blood test to detect antibodies to the probable causative agent of AIDS.

(Added Stats 1995 c. 415 (S.B. 1360) § 7.)

§ 120980. Civil and criminal liability for wrongful disclosure of AIDS test results

- (a) Any person who negligently discloses results of an HIV test, as defined Section 120775, to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not to exceed one thousand dollars (\$1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.
- (b) Any person who willfully discloses the results of an HIV test, as defined in Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3 or any other statute that expressly provides an exemption to this section, shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.
- (c) Any person who willfully or negligently discloses the results of an HIV test, as defined in Section 120775, to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3 or any other statute that expressly provides an exemption to this section, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars (\$10,000) or both.
- (d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act.
- (e) Each disclosure made in violation of this chapter is a separate and actionable offense.
- (f) Except as provided in Article 6.9 (commencing with Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the results of an HIV test, as defined in Section 120775, that identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.
- (g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.
- (h) Nothing in this section limits or expands the right of an injured subject to recover damages under other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.
- (i) Nothing in this section imposes liability or criminal sanction for disclosure of an HIV test, as defined in Section 120775, in accordance with any reporting requirement for a diagnosed case of AIDS by the department or the Centers for Disease Control under the United States Public Health Service.

- (j) The department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics that would identify individual donors.
- (k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.
- (l) When the results of an HIV test, as defined in Section 120775, are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 120985. Disclosure to health care providers

- (a) Notwithstanding Section 120980, the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization of the subject of the test, or the subject's representative as set forth in Section 121020, to the test subject's providers of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section "providers of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.
- (b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 120990. Written consent to test

- (a) Except in the case of a person treating a patient, no person shall test a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject of the test or the written consent of the subject, as provided in Section 121020, and the person giving the test shall have a written statement signed by the subject or conservator or other person, as provided in Section 121020 confirming that he or she obtained the consent from the subject. In the case of a physician and surgeon treating a patient, the consent required under this subdivision shall be informed consent, by the patient, conservator, or other person provided for in Section 121020.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Sections 120885 to 120895, inclusive. This requirement also does not apply to any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7152.5.

- (b) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a blood test to detect antibodies to the probable causative agent of AIDS on a cadaver when an autopsy is performed *or* body parts are donated pursuant to the Uniform Anatomical Gift Act provided for pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7.

- (c) The requirements of subdivision (a) do not apply when blood is tested as part of a scientific investigation conducted either by medical researchers operating under institutional review board approval or by the department in accordance with a protocol for unlinked testing. For purposes of this section, unlinked testing means that blood samples are obtained anonymously or that the individual's name and other identifying information is removed in a manner that precludes the test results from ever being linked to a particular individual in the study.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 121015. Liability for disclosure of AIDS test results; Confidentiality of identity of person tested and persons contacted

- (a) Notwithstanding Section 120980 or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect infection by the probable causative agent of acquired immune deficiency syndrome of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the county health officer, that the patient has tested positive on a test to detect infection by the probable causative agent of acquired immune deficiency syndrome, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected.
- (b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, that shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has attempted to obtain the patient's voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient's contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon shall refer that person for appropriate care, counseling, and follow up. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.
- (c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect infection by the probable causative agent of acquired immune deficiency syndrome are limited to the provisions contained in this chapter, Chapter 10 (commencing with Section 121075) and Sections 1603.1 and 1603.3. No physician has a duty to notify any person of the fact that a patient is reasonably believed to be infected by the probable causative agent of acquired immune deficiency syndrome.
- (d) The county health officer may alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on a test to detect infection by the probable causative agent of acquired immune deficiency syndrome about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and follow up. Upon completion of the county health officer's efforts to contact any person pursuant to this subdivision, all records regarding that person maintained by the county health officer pursuant to this subdivision, including but not limited to any individual identifying information, shall be expunged by the county health officer.

- (e) The county health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.
- (f) Except as provided in Section 1603.1 or 1603.3, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual reported or person contacted pursuant to this section.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 121020. Requirement of written consent for incompetent subject; Consent for minor, Disclosure of results

- (a) (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

Notwithstanding paragraph (1), when the subject of the test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.

- (b) Written consent shall only be obtained for the subject pursuant to subdivision (a) when necessary to render appropriate care or to practice preventative measures.
- (c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:
 - (1) Notwithstanding Sections 120975 and 120980, receive the results of the test on behalf of the subject without written authorization.
 - (2) Disclose the test results on behalf of the subject in accordance with Sections 120975 and 120980.
 - (3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 7.)

§ 121130. Legislative Findings and Intent

- (a) The Legislature finds and declares all of the following:
 - (1) Early knowledge of HIV infection is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.
 - (2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose HIV infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent HIV transmission, there will be occasions when they experience significant exposure to the blood or other potentially infectious materials of patients.

(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the HIV infection status of the patient.

(Formerly § 199.65, added by Stats.1994, c. 708 S.B. 1239), § 1. Renumbered §121130 and amended by Stats.1996, c. 1023 (S.B. 1497), § 108, eff. Sept. 29, 1996.)

§ 121132. Definitions

(a) "Attending physician of the source patient" means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

- (1) The private physician of the source patient.
- (2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.
- (3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) "Available blood or patient sample" means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the exposure incident.

(c) "Certifying physician" means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) "Exposed individual" means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(e) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or health care facilities or health care providers described in this subdivision.

- (f) "First responder" means police, firefighters, rescue personnel, and any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person's occupational duties or as a volunteer.
- (g) "Other potentially infectious materials" means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting HIV.
- (h) "Significant exposure" means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting HIV.
- (i) "Source patient" means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

(Formerly § 199.66, added by Stats.1994, c. 708 (S.B. 1239), § 1. Renumbered §121132 and amended by Stats.1996, c. 1023 (S.B. 1497), § 109, eff. Sept. 29, 1996.)

§ 121135. Required Guidelines and Procedures

Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

- (a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 121132. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.
- (2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.
- (b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for follow up testing, and the procedures that the exposed individual must follow regardless of the HIV status of the source patient. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of HIV infection without the consent of the source patient pursuant to subdivision (d).
- (2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on the HIV status of the source patient and the availability of blood or other patient sample. An attending physician shall respond to the request for information within three working days.

- (c) If the HIV status of the source patient is already known to be positive, then, except as provided in subdivisions (b) and (c) of Section 121010 when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the HIV status of the source patient. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the HIV status of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.
- (d) If the HIV status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline HIV test, the source patient shall be given the opportunity to give informed consent to an HIV test in accordance with the following:
- (1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:
 - (A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with a certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2). An inability of the source patient to provide informed consent shall constitute a refusal of consent to paragraph (2), provided all of the following conditions are met:
 - (i) The source patient has no authorized legal representative.
 - (ii) The source patient is incapable of giving consent.
 - (iii) In the opinion of the attending physician, it is likely that the source patient will be unable to grant informed consent within the 72-hour period during which the physician is required to respond pursuant to paragraph (1).
 - (B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform an HIV test on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for HIV testing from the source patient.
 - (C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and follow-up, if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.
 - (2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

- (3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.
 - (4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and refuses to learn the results of HIV testing, then he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.
 - (5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.
 - (6) The source patient's identity shall be encoded on the HIV test result record.
- (e) If an exposed individual is informed of the HIV status of a source patient pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the HIV test results, and that HIV-related medical information of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.
 - (f) The costs for the HIV test and counseling of the exposed individual, or the source patient, or both shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and follow-up required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain post exposure evaluation or follow up counseling, or both, or treatment, then he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.
 - (g) Nothing in this section authorized the disclosure of the source patient's identity.
 - (h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.
 - (i) The provisions of this section are cumulative only and shall not preclude HIV testing of source patients as authorized by any other provision of law.

(Formerly §199.67, added by Stats.1994, c. 708 (S.B. 1239), § 1. Renumbered § 121135 and amended by Stats.1996, c. 1023 (S.B. 1497), § 110, eff. Sept. 29, 1996. Amended by Stats.1998, c. 254 (S.B. 2056), § 1; Stats.1998, c. 519 (S.B. 1385), § 1.)

§121140. Criminal Liability or Professional Disciplinary Action Against Health Care Provider; Good Faith; Failure to Adhere to Procedures; Penalty

- (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing an HIV test on the available blood or patient sample of a source patient, or for disclosing the HIV status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.
- (b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of an HIV test on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars (\$10,000), or by both.

(Formerly §199.68, added by Stats.1994, c. 708 (S.B. 1239), § 1. Renumbered § 121140 and amended by Stats.1996, c. 1023 (S.B. 1497), § 111, eff. Sept. 29, 1996.)

§ 123105. Definitions

As used in this chapter:

- (a) "Health care provider" means any of the following:
 - (1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
 - (2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.
 - (3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.
 - (4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.
 - (5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.
 - (6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.
 - (7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
 - (8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.
 - (9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.
 - (10) A marriage, family, and child counselor licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
 - (11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.
- (b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited

to, all alcohol and drug abuse records.

- (c) "Patient" means a patient or former patient of a health care provider.
- (d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers or logs.
- (e) "Patient's representative" or "representative" means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.
- (f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123110. Inspection of records; Copying of records; Violations

- (a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.
- (b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty-five cents (\$0.25) per page or fifty cents (\$0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.
- (c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

- (d) (1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi-Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, "relevant portion of the patient's records" means those records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.
- (3) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.
- (4) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.
- (e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.
- (f) If a patient or his or her representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.
- (g) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. Nothing in this chapter shall be deemed to supersede any rights that a patient or representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. Nothing in this chapter shall require a health care provider to retain records longer than required by applicable statutes or administrative regulations.
- (h) This chapter shall not be construed to render a health care provider liable for the quality of his or her records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section.

Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

- (i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.
- (j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision (i).

(Amended by Stats. 2001, c. 325 (A.B. 1311), § 1.)

§ 123115. Representatives of minors; Risks of adverse consequences to patient in inspecting records

- (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:
 - (1) With respect to which the minor has a right of inspection under Section 123110.
 - (2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.
- (b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:
 - (1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.
 - (2) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by request of the patient. Any marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code. Prior to providing copies of mental health records to a marriage and family therapist registered intern, a receipt for those records shall be signed by the supervising licensed professional. The licensed physician and surgeon, licensed

psychologist, licensed marriage and family therapist, licensed clinical social worker, or marriage and family therapist registered intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

- (3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by written authorization of the patient.
- (4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

(Amended by Stats. 1997, c. 388 (S.B. 1295), § 1; Stats. 2000, c. 519 (A.B. 2161), § 2.)

§ 123120. Action to enforce right to inspect or copy

Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123125. Exception for alcohol, drug abuse and communicable disease carrier records

- (a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91-616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not prohibit disclosure of the records. All other alcohol and drug abuse records shall be fully subject to this chapter.
- (b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123130. Preparation of summary of record; Conference with patient

- (a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

- (b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:
- (1) Chief complaint or complaints including pertinent history.
 - (2) Findings from consultations and referrals to other health care providers.
 - (3) Diagnosis, where determined.
 - (4) Treatment plan and regimen including medications prescribed.
 - (5) Progress of the treatment.
 - (6) Prognosis including significant continuing problems or conditions.
 - (7) Pertinent reports of diagnostic procedures and tests and all discharge summaries
- (8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.
- (c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law.
- (d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.
- (e) Subdivision (c) of Section 123110 shall be applicable whether or not the health care provider elects to prepare a summary of the record.
- (f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient's representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123135. Construction of chapter

Except as otherwise provided by law, nothing in this chapter shall be construed to grant greater access to individual patient records by any person, firm, association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency. Therefore, this chapter does not do any of the following:

- (a) Relieve employers of the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).
- (b) Relieve any person subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) from the requirements of that act.
- (c) Relieve government agencies of the requirements of the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123140. Completion of screening program; Environmental abatement

The Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) shall prevail over this chapter with respect to records maintained by a state agency.

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123145. Preservation of records after licensee ceases operation; Action for abandonment of records

- (a) Providers of health services that are licensed pursuant to Sections 1205, 1253, 1575 and 1726 have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.
- (b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.
- (c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.

(Amended by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123148. Test results; recording and reporting to patient; plain language

- (a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be conveyed in plain language and in oral or written form, except the results may be conveyed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test. Consent of the patient to receive his or her laboratory results by Internet posting or in other electronic form shall be obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.
- (b) In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be delivered to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are delivered to a patient by Internet posting or other electronic manner.
- (c) When a patient requests to receive his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.
- (d) The electronic provision of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic personal

health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

- (e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.
- (f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic manner:
 - (1) HIV antibody test.
 - (2) Presence of antigens indicating a hepatitis infection.
 - (3) Abusing the use of drugs.
 - (4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation.
- (g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.
- (h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.
- (i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.
- (j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

(Amended by Stats. 2001, c. 529 (A.B. 1490), §1.)

§ 123149. Requirements for providers of health services utilizing electronic record keeping systems only

- (a) Providers of health services, licensed pursuant to Sections 1205, 1253, 1575, and 1726, that utilize electronic record keeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records are retained.
- (b) Any use of electronic record keeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of all electronic media used to store patient records by employing an offsite backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.
- (c) Original hard copies of patient records may be destroyed once the record has been electronically stored.
- (d) The printout of the computerized version shall be considered the original as defined in Section 255 of the Evidence Code for purposes of providing copies to patients, the Division of Licensing

and Certification, and for introduction into evidence in accordance with Sections 1550 and 1551 of the Evidence Code, in administrative or court proceedings.

- (e) Access to electronically stored patient records shall be made available to the Division of Licensing and Certification staff promptly, upon request.
- (f) This section does not exempt licensed clinics, health facilities, adult day health care centers, and home health agencies from the requirement of maintaining original copies of patient records that cannot be electronically stored.
- (g) Any health care provider subject to this section, choosing to utilize an electronic record keeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.
- (h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.
- (i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 8.)

§ 123150. Legislative findings and declarations

The board of supervisors may authorize the destruction or the disposition to a public or private medical library of any X-ray photographs and case records that are more than five years old and that were taken by the county health officer in the performance of his or her duties with regard to tuberculosis if any of the following conditions are complied with:

- (a) The county health officer has determined that the X-ray photographs or a series of X-ray photographs in conjunction with case records do not show the existence of tuberculosis in the infectious stage.
- (b) The individual of whom the X-ray photographs were taken has been deceased not less than two years or the 102nd anniversary of the individual's birth date has occurred and the county health officer cannot reasonably ascertain whether the individual is still living.
- (c) The place of residence of the individual of whom the X-ray photographs were taken has been unknown to the county health officer for 10 years.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 8.)